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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,435	06/26/2002	Frank Uhlik	15353	9151
7590	04/06/2005		EXAMINER	
Frank S DiGilio Scully Scott Murphy & Presser 400 Garden City Plaza Garden City, NY 11530			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 04/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/088,435	UHLIK, FRANK	
	Examiner Lien T. Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 3/24/05.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-45 and 66-115 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,5-13,17-22,26-29,33-45,66,68-70,74-77,79-82,86,87,90,95-97 and 102-115 is/are rejected.
 7) Claim(s) 2-4,14-16,22-25,30-32,71-73,83-85,92-94 and 99-101 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claims 43,112 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1 and 66 recite the gluten substitute is a solid aerated mass; claims 43 and 112 recite the heating is done by extrusion. This is not enabling as disclosed on page 11 of the specification. Page 11 discloses the gum produced by in an extruder forms a sticky liquid, not a solid mass.

Claims 1,5,6-8,9-13,17-22,26-28,29,33-37,38-45,66,68,69,70,74-77,79-82,86,87-90, 95-97,102-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko et al.

Kaneko et al disclose a food modifier. The modifier comprises 1 part protein, .5-4 parts of edible fat and oil, 3.5-13 parts of water and .5-2 parts of at least one material selected from the group consisting of mashed potato powder, sweet potato powder and starch. Examples of edible fat and oil include coconut oil, soybean oil, palm oil, palm kernel oil etc... Starches include tapioca starch, sweet potato starch, potato starch etc.. The modifier is made by mixing and heating the ingredients. The modifier is mixed with other food ingredients and the mixture is processed to form food product. (see col. 1 lines 41-65, col. 2 and columns 3-4)

Kaneko et al do not disclose the modifier as a gluten substitute food ingredient, the content of gluten in the modifier, the type of protein such as listed in claim 18, the

amount of protein as claimed, the temperature of heating as claimed, heating by extrusion and microwaving, the protein to fat ratio claimed, drying and grinding the modifier.

The limitation of a solid mass does not define over Kaneko et al because they disclose the modified is a paste that is obtained by heating starch, liquid, protein and fat. A paste is solid; also, the components in the paste are the same as the claimed substitute and the components are heated to form the paste. Thus, the use of paste and solid mass is a difference in the terminology and not in the actual product. As recited in the claims, the substitute is obtained by heating a mixture comprising starch, fat, protein and liquid and this is what Kaneko et al disclose. While Kaneko et al do not disclose the modifier as a gluten substitute, the modifier contains all the same ingredients as the claimed substitute; thus, it would have been obvious to one skilled in the art at the time of the invention to use the modifier as a gluten substitute when one wants to modify the gluten content of the food product being made. The modifier is made from starch which does not have gluten; thus, it is obvious the gluten content is within the range claimed. It would have obvious to one skilled in the art to increase the protein a little to enhance the nutrition of the product. The claimed protein amount is about 2 which can be less than 2; this is not seen to be much different from the 1% disclosed in Kaneko et al. When the protein content is increase, it is obvious the protein to fat ratio will change. It would have been obvious to alter this ratio depending on the amount of protein and fat wanted. It would have been obvious to use any kind of protein depending on the taste wanted. Kaneko et al teach to use soybean protein

which is the same type of protein claimed. Thus, it is obvious the protein can provide both the fat and protein sources. It would have been obvious to one skilled in the art to vary the heating temperature depending on the time of heating; for example, it would have been obvious to use higher temperature for a shorter period of time or vice versa. It would have been obvious to dry the emulsifier if a dried product is wanted and to grind the modifier to make it easier for incorporation in the food ingredients. Since Kaneko et al teach to mix the ingredients, the modifier is an aerated mass because mixing incorporates air. The claims do not define what aerated mass encompasses. It would have been obvious to use any means of heating known in the art to heat the ingredients. Heating by microwave or extrusion is both well known in the art.

Claims 2-4, 14-16,23,22-25,30-32,71-73,83-85,92-94,99-101 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no suggestion in Kaneko et al to use the amounts of starch and water as claimed; thus, there is no suggestion to make the fat:starch and protein:starch ratios as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 4, 2005

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1707